produced the passive condition. *Zollman* v. *Baltimore & Ohio S. W. Ry.*, 121 N. E. 135 (Ind. App.); *Burk* v. *Creamery P. M. Co.*, 126 Iowa, 730, 102 N. W. 793. See Joseph H. Beale, "The Proximate Consequences of an Act," 33 HARV. L. REV. 633, 650. Whether or not a risk is created involves the foreseeability of the intervening force. This is the only circumstance in which foreseeability is a factor in determining proximate causation. Considering the oncoming train as an intervening force, its intervention was clearly risked by the condition proximately caused by the defendant. On either view the causation was proximate. The decision is wrong.

RESTRAINT OF TRADE — FEDERAL TRADE COMMISSION — RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — ENFORCING RESALES AT FIXED PRICES. — A corporation engaged in manufacturing "branded" food products sought to fix resale prices of wholesalers, jobbers, and retailers. The company refused to sell to those distributors who resold at other than the stated prices, or who sold to others who did so. To effectuate its purpose, the company inaugurated a plan of tracing sales, marking packages, reporting infractions, and listing distributors. The case was heard before the Federal Trade Commission on an agreed statement of facts stating that no contract, express or implied, for maintaining resale prices existed. The Commission condemned the plan as an unfair method of competition under § 5 of the Federal Trade Commission Act (38 STAT. AT L. 719). The Circuit Court of Appeals for the 2nd Circuit set aside the order of the Commission. *Held*, that the judgment be reversed. *Federal Trade Commission* v. *Beech-Nut Packing Co.*, U. S. Sup. Ct., Oct. Term, 1921, No. 47.

It is the accepted doctrine of the United States Supreme Court that contracts between manufacturers of "branded" or "specialty" products and the wholesalers or retailers through whom they distribute, fixing resale prices, are illegal under the Sherman Act. *Dr. Miles Medical Co.* v. *Park & Sons*, 220 U. S. 373; *United States* v. *A. Schrader's Sons, Inc.*, 252 U. S. 85. This doctrine has aroused much criticism, deservedly so, it is believed. See KALES, CONTRACTS AND COMBINATIONS IN RESTRAINT OF TRADE, c. 4. See Gilbert H. Montague, "Should the Manufacturer Have the Right to Fix Selling Prices?", 63 ANNALS AM. ACAD. POL. AND SOC. SCI., 55. See 33 HARV. L. REV. 966. But, somewhat illogically, it was held legal for a manufacturer to refuse to sell to any who did not resell at fixed prices, thus achieving the same business result as he would have through contracts. *United States* v. *Colgate & Co.*, 250 U. S. 300. Though the principal case arises under the Federal Trade Commission Act and not under the Sherman Act, the test of illegality under either should be the same. See KALES, *op. cit.*, c. 12. See Cornelius Lynde, "The Federal Trade Commission and Its Relation to the Courts," 63 ANNALS AM. ACAD. POL. AND SOC. SCI., 24. No weight is given, on review, to the Commission's conclusions of law. See *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427; *National Harness Mfrs. Ass'n* v. *Federal Trade Commission*, 268 Fed. 705, 707. The court in the principal case purports to save the rule of the *Colgate* case. But the practical effect of its decision is necessarily otherwise. While not in terms denying the right to refuse to sell to those who do not comply with the restrictions, it denies the right to use any means of discovering noncompliance. In effect, the court has nullified a desirable exception to a questionable rule.

STATUTE OF FRAUDS — SALES OF GOODS, WARES AND MERCHANDISE — CONTRACT TO ESTABLISH CREDIT BY CABLE TRANSFER. — A bank in New York orally contracted to ". . . deliver to defendant . . . a cable transfer of exchange . . .", *i. e.* to make available to a customer, by cable, a credit of £20,000 in London, at any time within four months, at the customer's

option. As a defense to an action by the bank on this agreement, the customer pleaded the Statute of Frauds. (1911 N. Y. Laws, c. 571, § 4; CONSOL. LAWS, c. 41, § 85.) *Held*, that the plaintiff's demurrer to the answer be sustained. *Equitable Trust Co.* v. *Keene*, 66 N. Y. L. J. 1463 (C. A.).

The court interprets the pleadings as describing a contract for future action, and hence not a sale of any existing thing. Accordingly, it says, the Statute of Frauds is not applicable. But does that follow? The provisions of the statute apply to contracts for the future sale of goods not yet in existence, unless such goods are "to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business." See SALES ACT, § 4 (2); 1911 N. Y. LAWS, c. 571, § 4 (2); CONSOL. LAWS, c. 41, § 85 (2). See 1 WILLISTON, CONTRACTS, §§ 506–509, 521. The opinion leaves undiscussed the question whether the agreement contemplated the future sale of a chose in action yet to be created, and, if it did, whether such chose would be within the statutory exception quoted. Doubtless the court found what its language does not make clear: that the contract was not for any sale at any time, but for the mere doing of an act, the payment of money in London. The result seems correct; and it is, moreover, in accord with business practice. Various aspects of this and similar commercial transactions have received learned attention of late. See Osmond K. Fraenkel, "Some Aspects of the Law Relating to Foreign Exchange," 20 COL. L. REV. 832; Harlan F. Stone, "Some Legal Problems Involved in the Transmission of Funds," 21 COL. L. REV. 507; William E. McCurdy, "Commercial Letters of Credit," 35 HARV. L. REV. 539. See also 31 YALE L. J. 416.

TAXATION — TRANSFER TAX — CREATION BY DEED OF REMAINDER VESTING IN POSSESSION AFTER DEATH OF GRANTOR. — A statute taxed transfers "intended to take effect in possession or enjoyment at or after" the death of the transferor. (1909 N. Y. CONSOL. LAWS, c. 62, § 220 (4)). A, reserving a power of revocation, settled the income of a trust fund on B for life, with remainders over. A did not revoke. *Held*, that the transfer is not taxable. *Matter of Cochrane*, 190 N. Y. Supp. 895 (Surr. Ct.).

A, reserving a power of revocation, settled the income of a trust fund on B for life; on B's death the principal to be transferred to A; and in the event of A's prior death, to those persons who would then be his next of kin. A did not revoke and predeceased B. *Held*, that the transfer is not taxable. *Matter of Wing*, 190 N. Y. Supp. 998 (Surr. Ct.).

The holding of both cases that the reservation of a power of revocation does not *ipso facto* render the transfer taxable under the statute is sound. *People* v. *Northern Trust Co.*, 289 Ill. 475, 124 N. E. 662; *Matter of Masury*, 28 App. Div. 580, 51 N. Y. Supp. 331, aff'd, 159 N. Y. 532, 53 N. E. 1127. *Cf. Matter of Bostwick*, 160 N. Y. 489, 55 N. E. 208; *Matter of Miller*, 109 Misc. 267, 178 N. Y. Supp. 554. The result of the second case, however, seems untenable. It is not clear whether the next of kin were to be determined at the death of the donor or at the time of the distribution of the fund. (1) If the former, the property goes as by intestacy, and the transfer should be held taxable. (2) If the latter, it is submitted that it is, on authority, taxable. The mere fact that a gift *inter vivos* will, in the ordinary course of events, take effect after the donor's death does not make it taxable. *In re Bell's Estate*, 150 Iowa, 725, 130 N. W. 798. But a transfer is taxable which by the terms of the deed must necessarily take effect at the donor's death; as where the donor reserves to himself a life estate. *In re Murphy's Estate*, 182 Cal. 740, 190 Pac. 46; *Matter of Brandreth*, 169 N. Y. 437, 62 N. E. 563; *Lines's Estate*, 155 Pa. St. 378, 26 Atl. 728. This result has been reached even though the person who is to take the *corpus* of the gift at the death of the donor is given the enjoyment of the income meanwhile. *State Street Trust Co.* v. *Treasurer*